

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
TEXARKANA DIVISION

LARRY D. BELLEW

PLAINTIFF

VS.

Case No. 05-CV-4065

LARRY NORRIS, Director, Arkansas
Department of Correction

DEFENDANT

ORDER

Before the Court is the Report and Recommendation filed April 17, 2006 by the Honorable Bobby E. Shepherd, United States Magistrate Judge for the Western District of Arkansas. (Doc. 13) Petitioner Larry D. Bellew has timely filed his objections to the Report and Recommendation. (Doc. 15) Bellew is currently an inmate in the Arkansas Department of Corrections serving consecutive sentences of 40 and 20 years for murder in the first degree and murder in the second degree. Bellew's petition for writ of habeas corpus under 28 U.S.C. § 2254 seeks relief from his convictions of murder in the first degree and murder in the second degree in the Circuit Court of Miller County, Arkansas.

Judge Shepherd determined no evidentiary hearing was necessary and recommends Bellew's petition be dismissed because his claims are either procedurally barred or substantively without merit. After reviewing the record *de novo*, the Court adopts the Report and Recommendation as its own. Bellew's objections are only general disagreements with Judge Shepherd's findings and not specific. Therefore, the Court will not recite Judge Shepherd's findings here. It suffices to say that after the *de novo* review, the Court agrees with the Report and Recommendation in its entirety.

Bellew has raised an issue in his objections that he has not raised before in the direct appeal of his convictions, his state Ark. R. Crim. P. 37 litigation, or the addendum in this 28 U.S.C. § 2254 litigation. In his objections, Bellew argues, for the first time, that the prosecutors did not give his counsel a copy of the tape of the 911 call wherein he admitted to killing his wife and son. In habeas litigation, issues which are presented first as objections to a magistrate's report and recommendation are not properly before the district court. *See U.S. v. Armstrong*, 951 F.2d 626 (5thCir. 1992). Since Bellew's claim is not properly before this Court, the Court will not rule on its merits. The Court finds Bellew's petition should be and hereby is dismissed.

IT IS SO ORDERED, this 6th day of July, 2006.

/s/ Harry F. Barnes

Hon. Harry F. Barnes
U.S. District Court